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Lilly Corporate Center
Indianapolis, Indiana 46285
U.S.A.

Legal Department - Patent Division

Date: November 5, 2004

To: Examiner James Jason Galvez
Company: USPTO
Fax: 1-703-872-9306
Phone:From: Thomas Webster
Fax: 317-276-5172
Phone: 317-276-3334
Total Pages: 8Subject: Application No.: 10/089,984
Art Unit: 1647
Examiner: James Jason Galvez
Docket No.: X-13199

PRIVILEGED AND CONFIDENTIAL COMMUNICATION

Message: Please see attached Reply in response to Office Action of August 3, 2004. Thank
you.

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Answers That Matter.

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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
10/089,984	07/01/2002	Thomas Frank Bumol	X-13199	3218
25885	7590	08/03/2004	EXAMINER	
ELI LILLY AND COMPANY PATENT DIVISION P.O. BOX 6288 INDIANAPOLIS, IN 46206-6288			GALVEZ, JAMES JASON	
			ART UNIT	PAPER NUMBER
			1647	

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AUG 10 2004

ELI LILLY & COMPANY, PATENT DEPT.

DATE MAILED: 08/03/2004

Restriction 9.3.2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/089,984	Applicant(s) BUMOL ET AL.	
	Examiner J. Jason Galvez	Art Unit 1647	
	- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -		

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 05/01/2003.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-12 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☐ Claim(s) _____ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☒ Claim(s) 1-12 are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372. This application contains the following inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-3 and 8-12, drawn to method of treating selected lung diseases and inhibition of T cell activation.

Group II, claim(s) 4-7, drawn to method of manufacturing a pharmaceutical.

The inventions listed in Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT 13.2, they lack the same or corresponding special technical feature for the following reasons:

In accordance with PCT Rule 13.2, unity of invention exists only when there is a shared same or corresponding special technical feature among the claimed inventions. All the groupings are directed to methods of utilizing FLINT polypeptides, however each group has a different apparent special technical feature not shared by the remaining groups. Group I has the apparent special technical feature of a method of utilizing

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FLINT polypeptides in treating selected lung diseases and inhibition of T cell activation, while Group II has the apparent special technical feature of a method of utilizing FLINT polypeptides in the manufacture of a pharmaceutical. The special technical feature of Group I and II are distinct because they claim different starting material, different methodologies, different objectives, and different outcome measures. Thus, the inventions are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Jason Galvez, Ph.D. whose telephone number is 571-272-2935. The examiner can normally be reached Monday through Friday 9 AM to

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5 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Brenda Brumback, Ph.D.** can be reached at **571-272-0887**.

The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

JJG
07/30/04

Please type a plus sign (+) inside this box → ☐

PTO/SB/17 (12/97)

Approved for use through 09/30/00. OMB 0651-0032
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL

Note: Effective November 10, 1997.

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$980.00)

METHOD OF PAYMENT (check one)

1. ☒ The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:
- Deposit Account Number: 05-0840
- Deposit Account Name: Eli Lilly and Company
- ☒ Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17
- ☐ Charge the Issue Fee Set in 37 CFR 1.18 at the Mailing of the Notice of Allowance
2. ☐ Payment Enclosed:
- ☐ Check ☐ Money Order ☐ Other

FEE CALCULATION**1. FILING FEE**

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
101	790	201	395	Utility Filing Fee	
106	350	206	175	Design Filing Fee	
107	550	207	275	Plant Filing Fee	
108	790	208	395	Reissue Filing Fee	
114	160	214	80	Provisional Filing Fee	

SUBTOTAL (1) (\$0.00)

2. CLAIMS

Total Claims	-20**	Extr a	Fee from below	Fee Paid
Independent Claims	-3**		18	
Multiple Dependent Claims (first time)			88	
			300	

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description
103	18	203	9	Claims in excess of 20
102	88	202	44	Independent claims in excess of 3
104	300	204	150	Multiple dependent claim
109	88	209	44	Reissue independent claims over original patent
110	18	210	9	Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$0.00)

**or number previously paid, if greater; For Reissues, see above

Complete if Known

Application Number	10/089,984
Filing Date	July 1, 2002
First Named Inventor	BUMOL, Thomas Frank
Group Art Unit	1647
Examiner Name	GALVEZ, James Jason
Attorney Docket Number	X-13199

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge-late filing fee or oath	
127	50	227	25	Surcharge-late provisional filing fee or cover sheet.	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for reexamination	
112	920*	112	920*	Requesting publication of SIA prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIA after Examiner action	
115	110	215	55	Extension for reply within first month	
116	430	216	215	Extension for reply within second month	
117	980	217	490	Extension for reply within third month	980.00
118	1,530	218	765	Extension for reply within fourth month	
128	2,080	228	1,040	Extension for reply within fifth month	
119	340	219	170	Notice of Appeal	
120	340	220	170	Filing a brief in support of an appeal	
121	300	221	150	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive-unavoidable	
141	1,370	241	685	Petition to revive-unintentional	
142	1,370	242	685	Utility issue fee (or reissue)	
143	490	243	245	Design Issue Fee	
144	660	244	330	Plant Issue Fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Petitions related to provisional applications	
126	180	126	180	Submission of Information Disclosure Stmt.	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	790	246	395	Filing a submission after final rejection (37 CFR 1.129(a))	
149	790	249	395	For each additional invention to be examined (37 CFR 1.129(b))	
179	790	279	395	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Other fee (specify)

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$980.00)

SUBMITTED BY

Typed or Printed Name: Thomas D. Webster

Signature: *Thomas D. Webster***Complete (if applicable)**

Reg. Number: 39,872

Date: 11/5/04

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